

APR 03 2006

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

ANDREW K. QUIAMBAO,

Applicant-Defendant,

vs.

UNITED STATES OF AMERICA,

Respondent-Plaintiff.

Case No. CV-06-0004
CR-04-0002-002

ORDER DENYING APPLICANT
QUIAMBAO'S MOTION
FOR CERTIFICATE OF
APPEALABILITY

THIS MATTER came before the court on *pro se* applicant / defendant's notice of appeal filed on March 30, 2006. The Defendant's Notice of Appeal and His Request to Proceed on Appeal in Forma Pauperis, *Quiambao v. United States*, No. 3 (D. N. Mar. I. March 30, 2006). Although the form of the filing indicates that it is a notice, the court considers the substance of the filing to be a motion for the court to issue a certificate of appealability. Fed. R. App. P. 22(b)(1) ("If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.").

THE COURT, having considered the facts and its Order Denying Defendant Quiambao's Motion Under 28 U.S.C. § 2255, *Quiambao v. United States*, No. 2 (D. N. Mar. I. Feb. 24, 2006), **DENIES** applicant Quiambao's motion for the court to issue a certificate of appealability. As explained in the court's order of February 26, 2006, applicant's / defendant's motion under 28 U.S.C. § 2255 on grounds that the precedent from *United States v. Booker*, 543 U.S. 220 (Jan. 12, 2005), applies and that applicant / defendant received ineffective assistance of counsel were untimely. Because applicant Quiambao has not made a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), issuing a certificate of appealability is not appropriate.


ALEX R. MUNSON
Judge